



Public-Private Education and Infrastructure Facilities Act of 2002 (PPEA) Instructions to Proposers (Effective June 1, 2004)

I. Introduction

The PPEA allows VITA to develop innovative public-private partnerships with its industry partners through solicited and unsolicited proposals for projects for which VITA determines there is a public need. Due to its commitment to build success through partnerships, VITA is interested in receiving qualified proposals that support its strategic direction. For more information on how to submit a proposal visit the Secretary of Administrations' web site:

<http://www.administration.virginia.gov/Services/Vendors/PPEIA.cfm>

The Public-Private Education Facilities and Infrastructure Act of 2002, §§56-575.1 *et seq.* of the *Code of Virginia* (the "PPEA") allows VITA to create public-private partnerships for the development of a wide range of projects for public use if VITA determines the project serves a public purpose and that private involvement may provide the project in a timely or cost-effective fashion.

In order for a project to be eligible under the PPEA, it must meet the definition of a "qualifying project." The PPEA establishes requirements for the review and approval of proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of any comprehensive agreement between VITA and the private entity. VITA will follow the Secretary of Administration's Model Procedures to review PPEA proposals.

II. Point of Contact for Submission of Proposals:

All PPEA proposals should be submitted via mail or hand delivery to:

Chief Information Officer
C/o VITA, PPEA Proposals
Project Management Division
110 S. 7th Street, Suite 135
Richmond, VA 23219

PPEA questions or requests may be sent via e-mail to
unsolicitedproposals@vita.virginia.gov.

III. Proposal Format for Submission of Conceptual Proposal

Proposals shall provide a straightforward, concise delineation of capabilities, experience and approach. Elaborate brochures and/or excessive promotional materials are not required or desirable. Firms that submit proposals may be required to make an oral presentation of their proposal with participation by key personnel.

All information requested under Section VI (A), "FORMAT FOR SUBMISSION OF CONCEPTUAL PROPOSALS" of the Model Procedures must be included in any proposal submitted to VITA. In addition, all submitted proposals should contain the following, in addition to the requirements of the Model Procedures:

- Project Characteristics
 - Proposal should include sufficient data, analysis and information sufficient to satisfy VITA that the project would serve a public purpose as required by the PPEA.
 - Provide information about how the project is aligned with Virginia's strategic goals for technology.
- Financing
 - Proposal must include sufficient financial information which evidences the proposer's financial stability and an ability to provide financing to support the project.
 - The financial plan for the proposed project must contain enough detail, including cost benefit and tax analysis studies, so that an analysis will reveal whether the proposed financing is feasible.
- References
 - Each proposal should provide reference information for three to five successful relevant projects completed by the proposer.
 - References should include the following information:
 - Project owner/sponsor (business name and address).
 - Owner's Project Manager (name, telephone and fax numbers).
 - Project summary, budget and final cost.
 - Project schedule (proposed and actual)
- Lawsuits or Arbitration Proceedings
 - Each proposal should include a list and explanation of all lawsuits and arbitration proceedings during the past three years involving any of the proposing firms or any of its principles.

All PPEA proposals (conceptual phase and detailed phase) should follow the following format:

- All submitted proposals shall be clearly marked as a "PPEA Proposal."
- To be considered, one original and ten (10) copies and ten (10) electronic copies of any unsolicited or solicited proposals must be submitted. The applicable fee must be paid to VITA in certified funds, for all unsolicited

proposals. (Unsolicited proposals are those for which no Request for Procurement (RFP) or similar solicitation was published. Submission of competing proposals in response to an unsolicited proposal must include payment of the applicable review fee.) The cover page must include the title of the Proposal, the name and address of the proposing entity, the individual authorized to act on behalf of the proposer and his or her telephone and facsimile numbers and email address.

- An authorized representative of the firm or consortium making the Proposal must sign the Proposal.
- Each proposal should include an Executive Summary, which includes a summary of organizational structure, size of the firm(s), brief history, areas of expertise which qualify the firm(s) for the work and full range of services required for the proposed project
- All pages of the Proposal should be consecutively numbered.
- The Proposal should contain a table of contents, which cross references the requirements by category.
- Each copy of the Proposal should be bound or otherwise contained in a single volume where practicable.
- All proposal documentation for which a claim of confidentiality is made should be submitted in a separately bound clearly marked volume for convenience of review by VITA and to reduce the potential for inadvertent disclosure.

IV. PPEA Proposals and the Freedom of Information Act

Proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act. ("FOIA") In accordance with §2.2-3705 (A) (56) of the *Code of Virginia*, such documents are releasable if requested, except to the extent that they relate to (i) confidential proprietary information submitted to VITA under a promise of confidentiality or (ii) memoranda, working papers or such other records related to proposals if making public such records would adversely reflect the financing interest of VITA or the private entity or the bargaining position of either party.

§56-575.4(G) of the PPEA imposes an obligation on VITA and any affected local jurisdiction to protect confidential proprietary information submitted by a private entity. When the private entity requests that VITA not disclose information contained in its proposal, the private entity must (i) invoke the exclusion when the data or materials are submitted to VITA or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from VITA as to the anticipated scope of protection prior to submitting the proposal. VITA will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon receipt of a request that designated portions of a proposal be protected from disclosure as confidential proprietary information, VITA shall determine whether such protection is appropriate and determine the scope of such protection. VITA shall communicate its determination to the proposer. If the determination regarding protection or the scope thereof differs from the proposal's request, the proposer will have a reasonable opportunity to clarify and justify its request. Upon a final determination by VITA to accord less protection than requested by the proposer, the proposer will be allowed to withdraw its proposal. A proposal that is withdrawn shall be treated as a proposal not accepted for publication and conceptual phase consideration.

V. Agreement on Protection of Confidential Information

If VITA should decide to accept a proposal for consideration at the Conceptual Phase, VITA and the proposer will execute a written Confidentiality Agreement designating specifically what confidential proprietary information within the Proposal will be excluded from public disclosure.

VI. Proposal Review Fee

For unsolicited proposals and unsolicited competing proposals, VITA will require an initial processing fee of \$5,000. If VITA chooses to proceed with evaluation of any proposal to the conceptual stage, it shall not do so until the entire, non-refundable proposal review fee of \$45,000 has been paid to VITA by the proposer.

VII. VITA's Reservation of Rights

In connection with any Proposal or Qualifying Project, VITA shall have all rights available to it by law in administering the PPEA proposals that it receives, including without limitation the following:

1. To reject any or all Proposals at any time, for any reason, solely within the discretion of VITA. Proposers shall have no recourse against VITA for such rejection. Proposers will be notified in writing of such rejection.
2. Terminate evaluation, review or consideration of any and all Proposals at any time and reserve the right to issue an RFI or RFP for the proposed project.
3. Suspend, discontinue and/or terminate Comprehensive Agreement negotiations with any proposer at any time before the actual authorized execution of a Comprehensive Agreement by all parties.
4. Negotiate with a proposer without being bound by any provision in its Proposal.
5. Decline to return any fee required to be paid by proposers hereunder, except for initial fees paid by proposers with an unsolicited conceptual proposal where VITA declines to accept the proposal for consideration.
6. Request revisions to Conceptual or Detailed Proposals at any time during the conceptual or detailed review stages.
7. Submit a proposal for review by outside consultants or advisors selected by VITA without notice to the proposer. Such consultants or advisors shall

be contractually required to be bound by the Agreement on Protection of Confidential Information between the proposer and VITA.

8. VITA recognizes that it may receive Proposals, which have certain characteristics in common yet differ in meaningful ways. In such cases, VITA reserves the right, in its sole discretion, to treat such a Proposal or any portion of such Proposal received after the original Proposal, as either a competing proposal or a non-competing unsolicited Proposal, and to proceed accordingly.

VIII. Additional VITA provisions

1. Under no circumstances shall VITA be liable for, or reimburse any cost incurred by a proposer, whether or not selected for negotiations, in developing a proposal, submitting additional requested information to VITA or in negotiating a comprehensive agreement.
2. Any and all information VITA makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries.
3. If a proposer has a question or needs clarification on any matter during the PPEA process, the proposer must submit the question in writing and VITA will respond in writing as it deems appropriate. Written requests for information must be submitted via e-mail to unsolicitedproposals@vita.virginia.gov.

IX. When is a “similar” proposal a competing proposal?

In the event a potential proposer is unsure whether its planned Proposal will be sufficiently similar to the Proposal which was the subject of a notice to be deemed a competing proposal, such proposer may submit to VITA a written request for a preliminary determination of whether its project would be deemed a competing proposal in whole or in part. VITA will respond to such request with a preliminary determination as to whether or not the Proposal would be a competing proposal or that it has received insufficient information to make a determination. In the event VITA elects to treat a Proposal, or part of a Proposal, received within the posting period as a non-competing Proposal, VITA will follow the 45 day (or longer depending on the scope and complexity of the proposed project) posting period to permit competing proposals to be submitted, including from the proposer whose proposal triggered the original notice.

X. Proposal Format for Detailed Proposal

A detailed proposal should not depart significantly from the technical approach or financing plan described in the Conceptual proposal. If a proposer departs significantly in either respect, VITA may reject the Detailed Proposal as non-compliant. In particular, adoption of significant aspects or characteristics of a competing Conceptual Proposal will normally result in disqualification and rejection of a Detailed Proposal. At any time during the Detailed Stage, VITA may ask a proposer to provide additional information, data, analysis or any other information needed to sufficiently review the project

The required contents of a Detailed Proposal are listed in the Model Procedures in Section V I (B), entitled “FORMAT FOR SUBMISSIONS OF DETAILED PROPOSALS.”

If necessary to protect additional confidential proprietary information which may be included in the Detailed Proposal, VITA and the proposer will modify the previously executed Agreement on Protection of Confidential Information as needed.

XI. Proposal Steps

For unsolicited proposals, VITA will follow the following steps:

| PPEA Proposal Steps (Unsolicited Proposals) |
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| Receipt of Unsolicited Conceptual Proposal and Payment of \$5,000 Initial Review Fee |
| Initial Review of Unsolicited Proposal |
| Negotiation of Agreement on Protection of Confidential Proprietary Information (if necessary) |
| Preliminary Acceptance of Proposal and Payment of Balance of Review Fee (\$45,000) |
| Posting of Notice of Acceptance of Unsolicited Conceptual Proposal and Invitation for Competing Proposals |
| Receipt of Competing Proposals and Review Fees (\$50,000) |
| Conceptual Proposals – Initial Review |
| VITA/ITIB/SOTECH Approval and Selection of Proposal(s) for Detailed Proposal Submission |
| Detailed Proposal Preparation and Submission |
| Written Agreement on Protection of Confidential Proprietary Information for additional information submitted in the Detailed Phase (if necessary) . |
| Detailed Proposal – Review by VITA/Affected Local Jurisdictions Considered/Project/Proposal Approval for Development by ITIB |
| Project Selection |
| Negotiation of Comprehensive Agreement |
| Governor and General Assembly Approval |

XII. Applicability of Other Laws

Virginia constitutional, and federal and state statutory requirements governing appropriation and expenditure of public funds apply to any Comprehensive Agreement entered between VITA and any proposer under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds by VITA shall be incorporated into any PPEA proposal.

Although the Virginia Public Procurement Act (§2.2-4300 *et seq.* of the *Code of Virginia*) does not apply to Qualifying Projects submitted pursuant to the PPEA, the requirements of state and federal appropriations acts do apply wherever appropriated funds will be involved in the financing of a Qualifying Project. Proposals incorporating the use of state and/or federal funds should address how those Proposals are consistent with the legal restrictions imposed in appropriations acts.